

REMARKS

The present Amendment is submitted in response to the Office Action dated January 5, 2007. By this amendment, claim 10 has been amended. The amendment to claim 10 has been made to further clarify that the tissue engaging members are movable when they are deployed to engage the tissue. This amendment does not constitute a new issue in that this feature was previously recited in connection with, e.g., claims 10 and 13, which refers to the deployment of the tissue engaging members. Accordingly, entry of this amendment is hereby requested. .

Claims 10-17 stand rejected under 35 U.S.C. 102(e) by U.S. Patent No. 5,910,155 to Ratcliff. Ratcliff '155 relates to a vascular wound closure system. With reference to FIG. 32 of the Ratcliff '155 patent, the closure instrument 402 includes an elongated portion 408 defining a lumen 410 for applying suction. A pair of clips 414 is supported at the distal end of the elongated portion 408. A clip forming mechanism 420 having a pair of manually actuatable levers 422 are mounted about the clips 414. The levers 422 are moved toward each other to form the clips 414 about the tissue.

It is respectfully submitted that the present invention is patentable over Ratcliff '155. For example, Ratcliff '155 fails to teach or suggest the recited "said tissue engaging members being movable relative to said housing and adapted to cooperate to engage vascular tissue adjacent the vascular opening such that the vascular tissue is oriented in a predetermined orientation" and/or the recited "at least two jaw members positioned adjacent said tissue engaging members, said jaw members adapted for seizure of the vascular tissue in the predetermined orientation when in an open position of said jaw members, drawing together the vascular tissue during closing of said jaw members,

and rendering the vascular tissue in adjacent relation when in a closed position of said jaw members” as required by independent claim 10. Thus, with Applicant’s invention as recited in claim 10, engagement and closure of the vascular tissue is a multi-step process including movement of the tissue engaging members to engage the tissue to arrange the tissue at a predetermined orientation, and movement of the jaw members to engage the tissue in the predetermined orientation and drawing of the tissue together. In contrast, Ratcliff ‘155 is devoid of any tissue engaging members structured to function in the manner required by the claim. Rather, with Ratcliff ‘155, the elongated portion 408 is stationary and defines the lumen through which suction is applied to draw the vessel edge portions “e” into the elongated portion 408. Thereafter, the clips 414 are deformed by the levers 422. The levers 422 are not intended to engage tissue and certainly not to engage tissue and orient same in a predetermined orientation, e.g., an everted condition. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 10 stands rejected under 35 U.S.C. 102(e) by U.S. Patent No. 6,033,427 to Lee. Lee ‘427 relates to an instrument for sealing a puncture site. The instrument includes a pair of pincer members 86 incorporating lower portions 90 and straight portions 92. The straight portions 92 have a sleeve 94 disposed there around. In use, the pincer members 86 are advanced to pinch tissue therebetween. Thereafter, fibrin glue or the like is delivered through the sheath to close the puncture site.

It is respectfully submitted that the present invention is patentable over Lee ‘427. For example, Lee ‘427 fails to teach or suggest the recited “said tissue engaging members being movable relative to said housing and adapted to cooperate to engage vascular tissue adjacent the vascular opening such that the vascular tissue is

oriented in a predetermined orientation” and/or the recited “at least two jaw members positioned adjacent said tissue engaging members, said jaw members adapted for seizure of the vascular tissue in the predetermined orientation when in an open position of said jaw members, drawing together the vascular tissue during closing of said jaw members, and rendering the vascular tissue in adjacent relation when in a closed position of said jaw members” as required by independent claim 10. This multistage function and operation has been discussed hereinabove, and involves movement of the tissue engaging member to orient the vascular tissue and cooperative movement of the jaw members to close the opening. Lee ‘427 is devoid of two components which function in this manner. In contrast, with Lee ‘427, the pincers pinch the tissue with closure of the puncture site being affected through the application of a chemical. Accordingly, for at least these reasons, claim 10 is patentable over Lee ‘427.

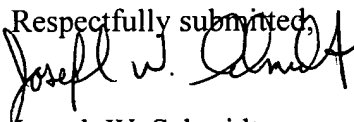
Claim 18 stands rejected under 35 U.S.C. 103 by Ratcliff ‘155 in view of U.S. Patent No. 6,063,085 to Tay. The combination of Tay ‘085 with Ratcliff ‘155 fails to disclose the recited “said tissue engaging members being movable relative to said housing and adapted to cooperate to engage vascular tissue adjacent the vascular opening such that the vascular tissue is oriented in a predetermined orientation” and/or the recited “at least two jaw members positioned adjacent said tissue engaging members, said jaw members adapted for seizure of the vascular tissue in the predetermined orientation when in an open position of said jaw members, drawing together the vascular tissue during closing of said jaw members, and rendering the vascular tissue in adjacent relation when in a closed position of said jaw members” as required in independent claim 10 (for at least the reasons discussed hereinabove) from

which claim 18 ultimately depends. Accordingly, withdrawal of this rejection is respectfully requested.

With regard to the nonstatutory obviousness-type double patenting rejection, Applicants will submit a Terminal Disclaimer upon indication of the otherwise allowance of the pending claims.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application are in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, she is requested to call the Applicants' undersigned attorney at her convenience.

Respectfully submitted,

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